

REMARKS

This responds to the Office Action mailed on December 2, 2003.

Claims 15, 28, and 32 are amended. No claims are canceled. Claims 36 – 44 are added. As a result, claims 15 – 44 are now pending in this application.

Information Disclosure Statement

Applicants have resubmitted the Supplemental Information Disclosure Statement which was previously submitted on September 15, 2003.

§112 Rejection of the Claims

Claims 32-35 were rejected under the written description requirement of 35 U.S.C. § 112, first paragraph for use of the term “expanding a material about the first passage to reduce an effective area of the material around the instrument to immobilize the instrument.” Applicant respectfully traverses.

Applicant’s disclosure describes, among other things, using a tool and/or guide stem to stretch and expand an opening in a stabilizer to accept an instrument. (See Application at page 17, lines 22 – 26.) Expanding the opening compresses the stabilizer—at least away from the opening. Removing the tool and/or guide stem allows the stabilizer to self-relax, which tightens the opening around the instrument. (See *id.* at lines 30 – 35.) Applicant respectfully submits that this reducing the size of the opening in the material of the stabilizer inherently constitutes “expanding a material about the first passage” as recited in the present claims. Therefore, Applicant respectfully submits that claims 32 – 35 fully comport with the written description requirement of 35 U.S.C. § 112, first paragraph. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

§102 Rejections of the Claims

1. Claims 15, 22, 27, 28 and 32 were rejected under 35 U.S.C. § 102(b) for anticipation by Paleschuck (U.S. Patent No. 3,402,710). Applicant respectfully traverses.

Among other things, Applicant can find no disclosure in Paleschuck of providing a relaxable material having an open first passage, as presently recited or incorporated in these claims. Instead, Paleschuck apparently uses a sphincter ring 11 that is compressed within an axial bore 12 such that its axial passage is normally closed, as illustrated in Figs. 2 and 6 of Paleschuck. Because all elements presently recited or incorporated in claims 15, 22, 27, 28 and 32 are not disclosed in Paleschuck, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

2. Claims 28, 30, 32 and 34 were rejected under 35 USC § 102(b) for anticipation by Schulte (U.S. Patent No. 3,444,861). Applicant respectfully traverses.

Concerning claims 28 and 30:

Among other things, Applicant can find no disclosure in Schulte of introducing an instrument into the spread open first passage and releasing the spread apart material to immobilize the instrument, as presently recited or incorporated in claims 28 and 30. Instead, Schulte apparently includes an opening 25 that is sized either (1) “slightly less than the outer diameter of the drainage tube so as to exert a frictional force thereon” or (2) “somewhat larger” in which case a lateral “pull on the tube will exert a frictional side load” on the opening 25. (*See* Schulte at column 2, line 69 – column 3, line 4.) Because all elements presently recited in claims 28 and 30 are not present in Schulte, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claims 32 and 34:

Among other things, Applicant can find no disclosure in Schulte of introducing an instrument into the spread open first passage and expanding a material about the first passage to reduce an effective area of the material around the instrument to immobilize the instrument, as presently recited or incorporated in claims 32 and 34. Instead, Schulte apparently includes an opening 25 that is sized either (1) “slightly less than the outer diameter of the drainage tube so as to exert a frictional force thereon” or (2) “somewhat larger” in which case a lateral “pull on the tube will exert a frictional side load” on the opening 25. (*See* Schulte at column 2, line 69 – column 3, line 4.) Because all elements presently recited in claims 32 and 34 are not present in Schulte, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Allowable Subject Matter

Claims 16, 17, 18, 19, 20, 25, 26, 29 and 31 were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims; accordingly, Applicant has introduced corresponding new claims 36, 37, 38, 39, 40, 41, 42, 43, and 44, respectively. Applicant respectfully requests allowance of these new claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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By their Representatives,

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Date March 2, 2004

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 2nd day of March, 2004.

PATRICIA A. HULTMAN

Name



Signature